

CAUSE NO. DC-13-420

FILED  
AT 11:21 O'CLOCK P M

MAY 30 2013

JUAN F. MARTINEZ

V.

WHATABURGER FRANCHISE LLC

§  
§  
§  
§  
§  
§  
§

IN THE 22nd DISTRICT COURT, STARR CO. TX  
BY Eloy R. Garcia DEPUTY

JUDICIAL DISTRICT COURT

STARR COUNTY, TEXAS

---

PLAINTIFF JUAN F. MARTINEZ' ORIGINAL PETITION

---

TO THE HONORABLE JUDGE OF SAID COURT:

JUAN F. MARTINEZ ("*Plaintiff*"), complaining of WHATABURGER FRANCHISE LLC ("*Defendant*"), and would respectfully show as follows:

I.

DISCOVERY LEVEL

1. Discovery under this petition should be conducted under Level 3 pursuant to Tex.R.Civ.P. 190.4.

II.

PARTIES

2. Plaintiff JUAN F. MARTINEZ is a natural person residing in Starr County, Texas.

3. Defendant WHATABURGER FRANCHISE LLC is a company authorized to and doing business in Texas. Defendant may be served with process by serving its registered agent for process Corporation Service Company, 211 East 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701.

[*Plaintiff Juan F. Martinez' Original Petition*]

A TRUE COPY: CERTIFIED  
ELOY RUBEN GARCIA

1 MAY 30 2013  
DISTRICT CLERK, STARR COUNTY, TEXAS  
BY Eloy R. Garcia DEPUTY



**III.**  
**VENUE/JURISDICTION**

4. This Court has jurisdiction over defendant because it is a Texas resident and/or conducts business in Texas. Defendant's conduct was a producing and/or proximate cause of Plaintiff's damages.



5. Venue is proper in Starr County, Texas under §§ 15.002(a)(1) and (2) and 15.005, of the Tex. Civ. Prac. & Rem. Code because the acts or omissions giving rise to this claim occurred in Starr County, Texas, and because Defendant WHATABURGER FRANCHISE LLC has done business in, and continues to do business in Starr County, Texas.

**IV.**  
**FACTUAL BACKGROUND**

6. On or about March 15, 2013, Plaintiff JUAN F. MARTINEZ was a invitee of and at the WHATABURGER owned and operated by WHATABURGER FRANCHISE LLC located at Whataburger 4143 East Highway 83, Rio Grande City, Starr County, Texas,

78582. Juan, while attempting to enter the building was injured as a result of his contact with the door. Plaintiff brings this suit to recover damages for personal injuries proximately caused by Defendant, WHATABURGER.

V.  
CAUSES OF ACTION

7. Defendant WHATABURGER had a duty to use ordinary care in building, maintaining and repairing its premises.

8. Defendant WHATABURGER owed the Plaintiff an affirmative duty to operate and maintain the WHATABURGER in a safe manner and in compliance with all applicable laws, rules and regulations for the safety of its patrons. On the occasion in question, Defendant WHATABURGER breached its highest duty by operating in a negligent and reckless manner, thus proximately causing Plaintiff, JUAN F. MARTINEZ to suffer serious injuries.

VI.  
ACTUAL AND SPECIAL DAMAGES

9. As a direct and proximate result of the conduct complained of herein, Plaintiff JUAN F. MARTINEZ suffered catastrophic injuries, including bodily impairment, disfigurement, severe physical and mental pain, mental anguish and loss of earning capacity in the past and future. In all reasonable probability, Plaintiff will suffer for the balance of his natural life. Plaintiff seeks to recover past and future damages for each element of his damages.

10. Plaintiff has incurred various medical expenses in the diagnosis and medical care and treatment of his injuries. These medical expenses were incurred and will be incurred for the necessary care and treatment of the injuries resulting from the incident made the basis of *[Plaintiff Juan F. Martinez' Original Petition]*

this action. As a further result of the injuries sustained by Plaintiff, there is a reasonable probability that Plaintiff will incur future expenses for his medical care and attention. Plaintiff seeks recovery of past and future medical expenses, and life care expenses.

11. As a proximate result of the Defendant's acts and omissions complained of herein, Plaintiff's capacity to earn a livelihood was totally destroyed or severely impaired, and in all reasonable probability this incapacity will continue long into the future, if not for the balance of Plaintiff's natural life. Plaintiff seeks damages for past and future lost wages and lost earning capacity.

#### VII. PREJUDGMENT AND POSTJUDGMENT INTEREST

12. Plaintiff hereby pleads for both prejudgment and post judgment interest as allowed by law.

#### VIII. CONDITIONS PRECEDENT/CAPACITIES

13. All conditions precedent have been performed or have occurred. Plaintiff sues Defendant in all capacities in which he is entitled to recover.

WHEREFORE PREMISES CONSIDERED, Plaintiff JUAN F. MARTINEZ prays that Defendant, WHATABURGER FRANCHISE LLC be cited to appear and answer, and that upon final trial, Plaintiff have and recover from Defendant the following:

- a. actual damages in excess of this Court's minimum jurisdictional limits;
- b. prejudgment interest at the highest legal rate allowed by law;
- c. post-judgment interest on said judgment until paid in full;
- d. court costs; and
- e. general relief, at law and in equity.

Respectfully submitted,

**HOCKEMA LAW FIRM**  
713 East Esperanza, Suite B  
McAllen, Texas 78501  
Telephone: 956/631-9112  
Facsimile: 956/630-9472  
E-Mail: [david@hockemalaw.com](mailto:david@hockemalaw.com)



---

DAVID H. HOCKEMA  
State Bar No. 09747500

**LAW OFFICE OF SHIREE D. SALINAS, PLLC**  
713 East Esperanza, Suite B  
McAllen, Texas 78501  
Telephone: 956/631-9112  
Facsimile: 956/630-9472  
E-Mail: [ssalinas@ssalinaslaw.com](mailto:ssalinas@ssalinaslaw.com)



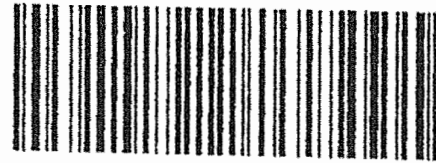
---

SHIREE D. SALINAS  
State Bar No. 17537000

**ATTORNEYS FOR PLAINTIFF**  
**JUAN F. MARTINEZ**

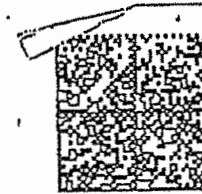
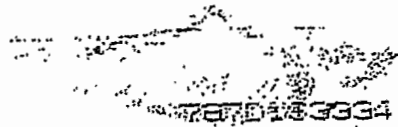


**ELOY R. GARCI**  
DISTRICT CLERK  
STARR COUNTY COURTHOUSE  
ROOM 304  
RIO GRANDE CITY, TEXAS 78582

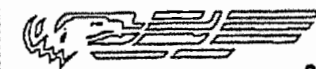


7012 2210 0000 3370 1052

**RESTRICTED DELIVERY**



U.S. POSTAGE PITNEY BOWES



ZIP 78582 \$011.52<sup>0</sup>  
02 1W  
0001379552 MAY. 31. 2013

Whataburger Franchise LLC  
Corporation Service Company  
211 East 7th Street Suite 620  
Austin, Texas 78701

**\*\*\* CITATION BY MAILING\*\*\***

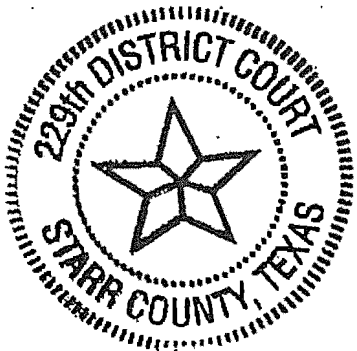
**TO: WHATABURGER FRANCHISE LLC  
CORPORATION SERVICE COMPANY  
211 EAST 7<sup>TH</sup> STREET, SUITE 620  
AUSTIN, TEXAS 78701**

Defendant, in the hereinafter styled and numbered cause: **DC-13-420**  
YOU ARE HEREBY COMMANDED to appear before the **229<sup>TH</sup> DISTRICT COURT**  
located and situated in the SECOND floor, Starr County Courthouse, Fourth & Britton  
Avenue, Rio Grande City, Texas, by filing a written answer to the **PLAINTIFF JUAN  
F. MARTINEZ ORIGINAL PETITION**, on or before 10:00 a.m. of the Monday next  
after the expiration of 20 Days after the date of service hereof, a copy of which  
accompanies the citation, in Cause Number: **DC-13-420** styled:

**JUAN F. MARTINEZ  
VS.  
WHATABURGER FRANCHISE LLC**

Filed in said Court on the 30<sup>TH</sup> day of MAY, 2013, Plaintiff is represented by  
SHIREE D. SALINAS, whose address is 713 EAST ESPERANZA, SUITE B,  
MCALEEN, TEXAS 78501

**ISSUED AND GIVEN UNDER MY HAND AND SEAL** of said court at office on the  
30<sup>TH</sup> day of MAY, 2013.



ELOY RUBEN GARCIA  
DISTRICT CLERK OF STARR COUNTY, TEXAS  
STARR COUNTY COURTHOUSE  
RIO GRANDE CITY, TEXAS

BY:

  
DEPUTY CLERK

**NOTICE**

You have been sued. You may employ an attorney. If you or your Attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

**OFFICER'S RETURN BY MAILING**

Came to hand the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and executed by mailing to the Defendant certified mail, return receipt requested with restricted delivery a true and correct copy of this citation together with an attached copy of Plaintiff's Petition to the following address:

**WHATABURGER FRANCHISE LLC  
CORPORATION SERVICE COMPANY  
211 EAST 7<sup>TH</sup> STREET, SUITE 620  
AUSTIN, TEXAS 78701**

CERTIFIED MAIL RECEIPT: 7012 2210 0000 3370 1052

Service upon the Defendant is evidenced by the return receipt incorporated herein and attached thereto, signed by \_\_\_\_\_ and dated \_\_\_\_\_

- Citation was not served despite the following use of diligence to execute service by the officer or person authorized to execute this citation: \_\_\_\_\_
- Citation was not executed because \_\_\_\_\_
- Defendant may be found at: \_\_\_\_\_
- To certify which witness my hand officially.
- \_\_\_\_\_, Signature of person serving citation  
\_\_\_\_\_ COUNTY, TEXAS; \_\_\_\_\_ DEPUTY